

# Exhibit J-1

AO 446 (Rev. 06/12) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

WILLIAM D. PILGRIM, (SEE ATTACHED SHEET  
FOR ADDITIONAL PLAINTIFFS)

*Plaintiff(s)*

v.

GENERAL MOTORS COMPANY LLC, and DOES 1  
THROUGH 50, INCLUSIVE

*Defendant(s)*

Civil Action No. 2:15-cv-08047 JFW(Ex)

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

GENERAL MOTORS COMPANY LLC  
300 Renaissance Center  
Detroit, MI 48265

**GM-LEGAL**

OCT 23 2015

**SERVICE OF PROCESS  
RENAISSANCE CENTER-DETROIT**

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Andre E. Jardini, Esq.  
KNAPP, PETERSEN & CLARKE  
550 North Brand Boulevard, Suite 1500  
Glendale, CA 91203

**L. J. HOFFMAN**  
Authorized Agent For Process  
General Motors - Detroit  
By Lisa Hoffman

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 10/14/2015

*Signature of Clerk or Deputy Clerk*



2:15-cv-08047 JFW(Ex)

Attachment to:

United States District Court, Central District Of California  
**SUMMONS IN A CIVIL ACTION**

List of Plaintiffs (continued from first page)

WALTER GOETZMAN, JEROME E. PEDERSON, MICHAEL FERNANDEZ,  
ROY HALEEN, HOWARD KOPEL, ROBERT C. MURPHY, MIKE PETERS,  
CHRISTOPHER CONSTANTINE, JOHN PARSONS, LYLE DUNAHOO,  
AARON CLARK, EDWIN WILLIAM KRAUSE, DAVID SHELDON, JARED  
KILEY, JEFF KOLODZI, MORRIS SMITH, ANDRES FREY, individuals, on  
behalf of themselves and all others similarly situated

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CHRISTOPHER CONSTANTINE, JOHN  
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EDWIN WILLIAM KRAUSE, DAVID  
10 SHELDON, JARED KILEY, JEFF KOLODZI,  
MORRIS SMITH, ANDRES FREY, individuals, on  
11 behalf of themselves and all others similarly situated

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 WILLIAM D. PILGRIM, WALTER ) NO.  
GOETZMAN, JEROME E. PEDERSON, )  
16 MICHAEL FERNANDEZ, ROY ) CLASS ACTION COMPLAINT FOR  
HALEEN, HOWARD KOPEL, ROBERT ) DEFECTIVE VEHICLES  
17 C. MURPHY, MIKE PETERS, )  
CHRISTOPHER CONSTANTINE, JOHN ) DEMAND FOR JURY TRIAL  
18 PARSONS, LYLE DUNAHOO, AARON )  
CLARK, EDWIN WILLIAM KRAUSE, )  
19 DAVID SHELDON, JARED KILEY, )  
JEFF KOLODZI, MORRIS SMITH, )  
20 ANDRES FREY, individuals, on behalf of )  
themselves and all others similarly )  
21 situated, )  
  
22 Plaintiffs, )  
v. )  
23 GENERAL MOTORS COMPANY LLC )  
24 and DOES 1 through 50, inclusive, )  
  
25 Defendants. )

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1 This complaint is brought by plaintiffs herein as a class action complaint  
2 concerning purchasers or lessees of Corvette vehicles equipped with the LS7 7.0LV8  
3 engine concerning model years 2006 to 2013. Those vehicles have exhibited  
4 excessive valve guide wear which has led to engine failures and inspections and  
5 repairs.

## 6 INTRODUCTION

7 1. Plaintiffs bring this action for themselves and on behalf of all persons in  
8 the United States, and in selected states, who purchased or leased Chevrolet Corvette  
9 427 or Chevrolet Corvette Z06 vehicles ("class vehicles") which were manufactured,  
10 distributed and sold by defendant General Motors Company LLC (hereinafter  
11 "GM").

12 2. GM widely advertised the 7.0 liter V8 engine which was used in the  
13 Chevrolet Corvette 427 and Chevrolet Corvette Z06 vehicle from 2006 through 2014  
14 as being of the highest quality and durability.

15 3. The above engine in the class vehicles was subject to excessive valve  
16 guide wear, a condition which was well-known by GM.

17 4. Because of defects in the design manufacture and assembly of these  
18 subject engines installed in the class vehicles, the class vehicles, and their engines,  
19 are by their nature susceptible to frequent mechanical failure, which has occurred.

20 5. Because of the defects in the design manufacture and assembly of the  
21 subject engines installed in the class vehicles, owners and lessees of the class  
22 vehicles have or will incur significant expense for inspection and/or repair of the  
23 class vehicles.

24 6. Despite knowledge of the propensity of the subject engine to excessive  
25 valve guide wear, GM has not issued a recall so that the class vehicles may be tested  
26 and repaired.

27 7. The defects which cause excessive valve guide wear are well-known  
28 and have been actively discussed by GM and owners or lessees of the class vehicles.

1 Yet, GM has taken no steps to correct the deficiencies in the subject engine. Despite  
2 GM's repeated assurances that the subject engines were performing as designed, the  
3 engines fail at a high rate.

4 8. Even extremely low mileage class vehicles have measured valve guide  
5 clearances far beyond service limits resulting in repairs at significant costs. Using  
6 the test specified by GM, a high proportion of owners or lessees of class vehicles had  
7 out of specification valve guides on class vehicles built from 2006 to 2014.

8 9. When confronted by multiple complaints concerning the above-  
9 described defects, GM deflected complaints by insisting that "valve train noise" was  
10 an inherent feature of the subject engine, and that the subject engines are not  
11 defective.

12 10. Further, GM attempted to minimize the extent of any problems by  
13 falsely asserting that the problems arose from a single supplier and were limited to a  
14 short period of time from July 2008 to March 2009. Even then, GM maintained that  
15 the condition was not truly an out of specification condition and that the condition  
16 had been remedied.

17 11. As a result of customer complaints concerning the subject engines in the  
18 class vehicles, GM developed and implemented an investigation technique known as  
19 the "wiggle method," as a method to determine whether the valve guides were out of  
20 specification.

21 12. When GM determined that its adopted test would lead to more repairs  
22 and investigations than it wished to perform, the test was summarily rejected.

23 13. In dealing with multiple complaints concerning the subject engine in the  
24 class vehicles, GM acted, at all times, to deflect criticisms, defer investigations and  
25 repairs, and minimized the extent of the problems.

26 14. During the time that GM has temporized, minimizing the extent of the  
27 defect in the subject engines, class members have continued to suffer excessive valv  
28 train noise, out of specification valve guides and engine failures.

1 15. As a result of GM's misconduct alleged herein, plaintiffs and the other  
2 owners and lessees of class vehicles have been harmed and have suffered actual  
3 damages, in that the class vehicles continue to experience mechanical failure due to  
4 the engine defect, and GM has not come up with a permanent remedy for this defect.  
5 Furthermore, owners and lessees of class vehicles have incurred, and will continue to  
6 incur, out-of-pocket unreimbursed costs and expenses relating to the engine defect.

## 7 PARTIES

### 8 Plaintiffs

9 16. Plaintiff William D. Pilgrim (hereinafter "Pilgrim") resides in the State  
10 of Arizona. Pilgrim owns a 2008 Corvette Z06 vehicle with a 7.0L 427 engine. The  
11 vehicle was purchased on January 29, 2014. This vehicle was manufactured, sold,  
12 distributed, advertised, marketed and warranted by GM. The vehicle has exhibited  
13 excessive valve train noise. The vehicle failed GM's wiggle test. Pilgrim has  
14 incurred repair costs and other harm due to the engine defect in this vehicle.

15 17. Plaintiff Walter Goetzman (hereinafter "Goetzman") is a resident of  
16 Alabama. Goetzman has owned a 2007 Corvette Z06 vehicle. This vehicle was  
17 manufactured, sold, distributed, advertised, marketed and warranted by GM.

18 18. Plaintiff Jerome E. Pederson (hereinafter "Pederson") is a resident of the  
19 Arizona. Pederson owns a 2009 Corvette Z06 vehicle with a 7.0L V8 engine. This  
20 vehicle was purchased in July of 2013. This vehicle was manufactured, sold,  
21 distributed, advertised, marketed and warranted by GM. This vehicle is defective  
22 and subject to excessive valve guide wear.

23 19. Plaintiff Michael Fernandez (hereinafter "Fernandez") is a resident of  
24 California. Fernandez owns a 2008 Corvette Z06 vehicle with a 7.0L V8 engine  
25 purchased May 24, 2013. This vehicle was manufactured, sold, distributed,  
26 advertised, marketed and warranted by GM. All valve clearances on the vehicle  
27 were inspected and found to be outside the manufacturer's allowable tolerance range  
28 Inspection expenses were incurred.

1           20. Plaintiff Roy Haleen (hereinafter "Haleen") is a resident of California.  
2 Haleen owns a 2008 Corvette Z06 vehicle with a 7.0L 427 engine. This vehicle was  
3 manufactured, sold, distributed, advertised, marketed and warranted by GM. Valves  
4 on the vehicle were inspected and found to be out of specification. Expense for  
5 inspection and repair was incurred.

6           21. Plaintiff Howard Kopel (hereinafter "Kopel") is a resident of California  
7 Kopel has owned two class vehicles, a 2008 Corvette C6 and a 2006 Corvette Z06.  
8 These vehicles was manufactured, sold, distributed, advertised, marketed and  
9 warranted by GM. Both vehicles suffered from excessive valve guide wear and  
10 underwent inspection and repair. Mr. Kopel has incurred expense due to the  
11 described defect.

12           22. Plaintiff Robert C. Murphy (hereinafter "Murphy") is a resident of  
13 California. Murphy owns a 2006 Corvette Z06 vehicle, with a 7.0L LS7 engine. Th  
14 vehicle was purchased on January 27, 2014. This vehicle was manufactured, sold,  
15 distributed, advertised, marketed and warranted by GM. The vehicle has exhibited  
16 excessive value train noise and has failed the wiggle test.

17           23. Plaintiff Mike Peters (hereinafter "Peters") is a resident of California.  
18 Mr. Peters has owned a 2009 Corvette Z06 vehicle with a 7.0L 427 c.i. engine. This  
19 vehicle was purchased in April of 2012. This vehicle was manufactured, sold,  
20 distributed, advertised, marketed and warranted by GM. This vehicle is defective  
21 and subject to excessive valve guide wear.

22           24. Plaintiff Christopher Constantine (hereinafter "Constantine") is a  
23 resident of Florida. Constantine owns a 2006 Corvette Z06 vehicle with a 7.0L LS7  
24 engine. This vehicle was purchased in December 2010. This vehicle was  
25 manufactured, sold, distributed, advertised, marketed and warranted by GM. The  
26 valve guides were subject to excessive wear and were repaired in 2013, causing  
27 expense to be incurred.

28 ////

1           25. Plaintiff John Parsons (hereinafter "Parsons") is a resident of Florida.  
2 Parsons has owned a class vehicle. This vehicle was manufactured, sold, distributed  
3 advertised, marketed and warranted by GM. This vehicle suffers from the described  
4 defect and expense has been incurred for inspection and repair.

5           26. Plaintiff Lyle Dunahoo (hereinafter "Dunahoo") is a resident of Illinois  
6 Dunahoo owns a 2009 Corvette Z06 vehicle with a 7.0 engine. This vehicle was  
7 purchased in January of 2012. This vehicle was manufactured, sold, distributed,  
8 advertised, marketed and warranted by GM. The vehicle has out of specification  
9 findings as to valve guide clearances on eight intake valves and eight exhaust valves

10           27. Plaintiff Aaron Clark ("Clark") is a resident of Indiana. Clark has  
11 owned a 2008 Corvette Z06 vehicle, with a 7.0 liter LS7 engine. This vehicle was  
12 manufactured, sold, distributed, advertised, marketed and warranted by GM.

13           28. Plaintiff Edwin William Krause (hereinafter "Krause") is a resident of  
14 Michigan. Krause has owned a 2009 Corvette Z06 vehicle purchased in April 2014.  
15 This vehicle was manufactured, sold, distributed, advertised, marketed and warranted  
16 by GM.

17           29. Plaintiff David Sheldon (hereinafter "Sheldon") is a resident of  
18 Montana. Sheldon owns a 2009 Corvette Z06 with a 7.0L engine. The vehicle was  
19 purchased on October 15, 2012. This vehicle was manufactured, sold, distributed,  
20 advertised, marketed and warranted by GM. Valve guides were inspected and were  
21 out of specification, resulting in costly repairs.

22           30. Plaintiff Jared Kiley (hereinafter "Kiley") is a resident of Mason, Ohio.  
23 Kiley owns a 2006 Corvette Z06 vehicle with a 7.0L engine. This vehicle was  
24 purchased on August 11, 2014. This vehicle was manufactured, sold, distributed,  
25 advertised, marketed and warranted by GM. The vehicle's guides were measured  
26 and found to be significantly out of specification. Expense was incurred for  
27 inspection and repair of the engine.

28 ///

1 31. Plaintiff Jeff Kolodzi (hereinafter "Kolodzi") is a resident of  
2 Pennsylvania. Kolodzi owns a 2008 Corvette Z06 vehicle with a 427 c.i. engine.  
3 The vehicle was purchased in January 2013. This vehicle was manufactured, sold,  
4 distributed, advertised, marketed and warranted by GM. Valves were inspected and  
5 found to be out of specification resulting in expenses incurred.

6 32. Plaintiff Morris Smith (hereinafter "Smith") is a resident of Tennessee.  
7 Smith has owned a 2009 Corvette Z06 vehicle purchased in 2010. This vehicle was  
8 manufactured, sold, distributed, advertised, marketed and warranted by GM.

9 33. Plaintiff Andres Frey (hereinafter "Frey") is a resident of Texas. Frey  
10 owns a 2008 Corvette Z06 vehicle with a 7.0L 427 c.i. engine. This vehicle was  
11 manufactured, sold, distributed, advertised, marketed and warranted by GM. Valve  
12 guides were found on inspection to be significantly out of specification, resulting in  
13 expensive repairs.

14 34. Defendant General Motors LLC ("new GM, GM, or defendant") is a  
15 Delaware limited liability company with its principal place of business located at 300  
16 Renaissance Center, Detroit, Michigan, and is a citizen of the States of Delaware and  
17 Michigan. The sole member and owner of General Motors LLC is General Motors  
18 Holding LLC. General Motors Holding LLC is a Delaware limited liability company  
19 with its principal place of business in the State of Michigan. The sole member and  
20 owner of General Motors Holding LLC is General Motors Company, which is a  
21 Delaware corporation with its principal place in the State of Michigan, and is a  
22 citizen of the States of Delaware and Michigan.

23 35. New GM was incorporated in 2009 and, effective on July 11, 2009,  
24 acquired substantially all assets and assumed certain liabilities of General Motors  
25 Corporation through a section 363 sale under Chapter 11 of the U.S. Bankruptcy  
26 Code. It is undisputed that new GM had express obligations, as well as obligations  
27 by law, to comply with the certification, reporting and recall requirements of the  
28 National Traffic and Motor Vehicle Act and the Transportation Recall Enhancement

1 Accountability and Documentation Act.

2 **JURISDICTION**

3 36. This is a class action.

4 37. Members of the proposed plaintiff class are citizens of states different  
5 from the home state of defendant.

6 38. On information and belief, aggregate claims of individual class  
7 members exceed \$5,000,000, inclusive of interest and costs.

8 39. Jurisdiction is proper in this Court pursuant to 28 U.S.C. section  
9 1332(d).

10 **VENUE**

11 40. GM, as new GM has engaged in unfair business practices directed at/or  
12 causing to persons residing, located or doing business in this district and in the  
13 United States.

14 41. Defendant through its business of distributing, selling and leasing its  
15 vehicles has established sufficient contacts in this district such that it is subject to  
16 personal jurisdiction here. Defendant is deemed to reside in this district pursuant to  
17 28 U.S.C. section 1391(a).

18 42. In addition, a substantial part of the events or omissions giving rise to  
19 these claims and a substantial part of the property that is a subject of this action are i  
20 this district.

21 43. Venue is proper in this Court pursuant to 20 U.S.C. 1391(a).

22 **CLASS ALLEGATIONS**

23 **A. The Nationwide Class**

24 44. Under Rules 23(a), 23(b)(2) and/or 23(b)(3) of the Federal Rules of  
25 Civil Procedure, plaintiffs bring this action on behalf of themselves and a class  
26 initially defined as follows. For the assertion of claims under the Racketeer  
27 Influence and Corrupt Organizations Act ("RICO" and/or "the Nationwide Class")

28 ////

1 All persons in the United States who purchased or leased a class  
2 vehicle at any time from 2006 to the present and who (1) still own or  
3 lease a class vehicle or (2) sold a class vehicle at any time from 2006 to  
4 the present. Class vehicles include all Chevrolet Corvette 427 or  
5 Corvette Z06 vehicles equipped with 7.0 liter engines. Excluded from  
6 the nationwide class are new GM, its employees, co-conspirators or  
7 officers, directors, legal representatives, heirs, successors, and wholly or  
8 partly owned subsidiaries or affiliates of new GM, new GM dealers,  
9 class counsel and their employees; and the judicial officers and their  
10 immediate family members and associated court staff assigned to this  
11 case, and all persons within the third degree of relationship of any such  
12 persons.

13 **B. State Law Classes**

14 45. Plaintiffs allege claims, under the laws of each state and the District of  
15 Columbia, for the following state-wide classes:

16 All persons who purchased or leased a class vehicle at any time  
17 from 2006 to the present. Excluded from each of the class and  
18 subclasses are new GM, its employees co-conspirators or officers,  
19 directors, legal representatives, heirs, successors, and wholly or partly  
20 owned subsidiaries or affiliates of new GM, new GM dealers, class  
21 counsel and their employees; and the judicial officers and their  
22 immediate family members and associated court staff assigned to this  
23 case, and all persons within the third degree of relationship of any such  
24 persons.

25 A subclass in each described state for persons who purchased or  
26 leased a class vehicle before July 2009.

1 **C. The Classes and Subclasses Meet Rule 23 Requirements**

2 46. Plaintiffs are informed and believe that there are approximately 28,000  
3 class vehicles nationwide and such vehicles exist in each state. Individual joinder of  
4 all class members is impracticable.

5 47. The class can be readily identified using registration records, sales  
6 records, production records, and other information kept by GM or third parties in the  
7 usual course of business within their control.

8 48. Questions of law and fact are common to each of the classes and  
9 subclasses and predominate over questions affecting only individual members,  
10 including the following:

11 (a) Whether Chevrolet Corvette 427 and Corvette Z06 vehicles  
12 equipped with 7.0 liter V8 engines suffer from engine valve guide defects.

13 (b) Whether GM was aware of the defects, and concealed the defects  
14 from regulators, plaintiffs, and the class;

15 (c) Whether GM misrepresented to class vehicle purchasers that GM  
16 branded vehicles are safe, reliable and of high quality;

17 (d) Whether GM misrepresented itself as a reputable manufacturer  
18 that values quality in its vehicles and stands behind its vehicles after they are sold;

19 (e) Whether GM actively encouraged the concealment of known  
20 defects from regulators and consumers;

21 (f) Whether GM engaged in fraudulent concealment;

22 (g) Whether GM engaged in unfair, deceptive, unlawful and/or  
23 fraudulent acts or practices in trade or commerce by failing to disclose that the class  
24 vehicles had serious defects.

25 (h) Whether GM violated various state consumer protection statutes.

26 (i) Whether the 7.0 liter V8 engines contained within the class  
27 vehicles were unfit for the ordinary purposes for which they were used in violation of  
28 the implied warranty of merchantability;

1 (j) Whether GM's unlawful, unfair, fraudulent and/or deceptive  
2 practices harmed plaintiffs and the members of the class

3 (k) Whether GM has been unjustly enriched;

4 (l) Whether GM formed an enterprise with others within the meaning  
5 of RICO for improper purpose with the effect of suppressing the defects,  
6 misrepresenting the safety and quality of the class vehicles, and/or avoiding or  
7 delaying necessary recall.

8 (m) Whether the nationwide class members lost money and/or a  
9 property within the meaning of RICO;

10 (n) Whether plaintiffs and the members of the class are entitled to  
11 equitable and/or injunctive relief;

12 (o) What aggregate amounts of statutory penalties, as available under  
13 the laws of certain states, are sufficient to punish and deter GM and to vindicate  
14 statutory and public policy, and how such policies should most equitably be  
15 distributed among class members; and

16 (p) Whether any and all applicable limitation periods are tolled by  
17 acts of fraudulent concealment.

18 49. Plaintiffs' claims are typical of the claims of the class members and  
19 arise from the same course of conduct by GM. The relief plaintiffs seek is typical of  
20 the relief sought for the absent class members.

21 50. Plaintiffs will fairly and adequately represent and protect the interests of  
22 all absent class members. Plaintiffs are represented by counsel competent and  
23 experienced in product liability, consumer protection, and class action litigation.

24 51. A class is superior to other available methods for the fair and efficient  
25 adjudication of this controversy since joinder of all the individual class members is  
26 impracticable because the damages suffered by each individual class member may be  
27 relatively small. The expense and burden of individual litigation would make it very  
28 difficult or impossible for individual class members to redress the wrongs done to

1 each of them individually, and the burden imposed on the judicial system would be  
2 enormous. Rule 23 provides the Court with authority and flexibility to maximize the  
3 benefits of the class mechanism and reduce management challenges. The Court may  
4 on motion of plaintiffs or on its own determination, utilize the processes of Rule  
5 23(c)(4) and or (c)(5) to certify common questions of fact or law and to designate  
6 subclasses.

7 52. The prosecution of separate actions by the individual class members  
8 would create a risk of inconsistent or varying adjudications for individual class  
9 members, which would establish incompatible standards of conduct for GM. The  
10 conduct of this action as a class action presents far fewer management difficulties,  
11 conserves judicial resources and the parties' resources, and protects the right of each  
12 class member.

13 53. Plaintiffs are not aware of any obstacles likely to be encountered in the  
14 management of this action that would preclude its maintenance as a class action.  
15 Plaintiffs anticipate providing appropriate notice to be approved by the Court after  
16 discovery into the size and nature of the class. Absent a class action, most class  
17 members would likely find the cost of litigating their claims prohibitively high, and  
18 would therefore have no effective remedy at law. Because of the relatively small  
19 size of the individual class members claims, it is likely that only a few class member  
20 could afford to seek legal redress for GM's misconduct. Absent a class action, class  
21 members will continue to incur damages and GM's misconduct will continue without  
22 remedy.

### 23 CLAIMS FOR RELIEF

#### 24 COUNT I

#### 25 VIOLATION OF RACKETEER INFLUENCED AND CORRUPT 26 ORGANIZATIONS ACT ("RICO") 18 U.S.C. Section 1961, et seq.

27 54. Plaintiffs hereby incorporate by reference the allegations contained in  
28 the proceeding paragraphs of this complaint.

1           55. This claim is brought on behalf of the nationwide class against  
2 defendant GM for actual damages and treble damages and equitable relief under 18  
3 U.S.C. section 1964. Members of the nationwide class are referred to herein  
4 collectively as “class members.”

5           56. GM, the Enterprise member, plaintiffs and the class members are  
6 “persons” within the meaning of 18 U.S.C. section 1961(3).

7           57. On May 24, 2015, the United States Department of Justice announced it  
8 had found evidence of criminal wrongdoing by GM, including repeated acts of fraud  
9 for its failure to disclose defects in its products. GM committed both criminal and  
10 civil fraud and, as set forth in this complaint, did not act alone.

11           58. From the inception of new GM onwards, new GM conducted an  
12 enterprise of associated in fact entities (“the Enterprise”), which was designed to  
13 conceal information regarding the true nature and scope of defects to its automobile  
14 products from the public, the federal government and its agencies, its customers, and  
15 the owners and lessees of GM-branded vehicles, including the defective vehicles at  
16 issue herein; and to affirmatively misrepresent the quality of GM branded vehicles in  
17 order to (a) fraudulently induce plaintiffs and other class members to purchase or  
18 lease the subject vehicles, and (b) avoid the cost of fixing the defects which existed  
19 in the class vehicles and to avoid undermining GM’s brand image concerning class  
20 vehicles owned by plaintiffs and class members.

21           59. New GM was associated with the illegal enterprise and conducted and  
22 participated in the enterprise’s affairs through a pattern of racketeering activity  
23 consisting of numerous and repeated uses of the interstate mails and wire  
24 communications to execute a scheme to defraud, all in violation of 18 U.S.C. section  
25 1962(c).

26           60. The RICO Enterprise which engaged in, and whose activities affected,  
27 interstate and foreign commerce, is an association in fact enterprise within the  
28 meaning of 18 U.S.C. 1961(4) and consists of “persons” associated together for the

1 common purpose of employing the multiple deceptive , abusive, and fraudulent acts  
2 described herein.

3 61. At all times, the enterprise consisted of at least new GM and Esis, Inc.  
4 (hereinafter "Esis").

5 62. Esis is a company that offers "risk management products and services."  
6 It is part of the Ace Group, headed by Ace Limited, and is separate and distinct from  
7 the other enterprise constituents. During the duration of the enterprise, Esis served a  
8 new GM's claims administrator, routinely investigating, analyzing and resolving  
9 claims involving defects in GM vehicles, including the defects alleged herein.  
10 Product liability claims forwarded Esis for investigation and review included, among  
11 others, those involving engine failures and costs of inspection and repair. Esis  
12 knowingly collaborated with new GM to fraudulently conceal information about the  
13 defects from claimants, the government and its agencies, and the public, which  
14 scheme was furthered by Esis's mailings and wire communications with the  
15 Enterprise and claimants.

16 63. Esis was at all times well aware of the excessive valve guide wear in the  
17 class vehicles.

18 64. The RICO enterprise is an ongoing organization with an ascertainable  
19 structure, and a framework for making and carrying out decisions, that functions as a  
20 continuing unit with established duties, and that is separate and distinct from the  
21 pattern of racketeering activity in which enterprise members have engaged and are  
22 engaging. The enterprise was and is used by new GM as a tool to effectuate the  
23 pattern of racketeering activity.

24 65. New GM and Esis are entities separate and distinct from each other, and  
25 from the enterprise. All of the enterprise constituents are independent legal entities  
26 with the authority and responsibility to act independently of the enterprise and of the  
27 other enterprise members.

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1           66. The members of the enterprise all had a common purpose: To  
2 misrepresent the quality of GM-branded vehicles and/or to conceal information  
3 regarding the nature and scope of the defects, including the engine defect as alleged  
4 herein, from the government, its agencies, the public, and the class. For new GM,  
5 the purpose of the scheme to defraud was to conceal the true scope and nature of the  
6 defects in order to sell at least more vehicles, as well as avoid incurring the cost and  
7 responsibility of repairing or replacing class vehicles. By concealing the scope and  
8 nature of the defects, new GM maintained and boosted consumer confidence in the  
9 GM brand, sold more GM vehicles, and avoided remediation costs and negative  
10 publicity associated with the defects and recalls.

11           67. New GM conducted and participated in the affairs of the enterprise  
12 through a pattern of racketeering activity that lasted many years, commencing from  
13 or shortly after new GM's inception as an entity in 2009, continuing through at least  
14 2014. This pattern consisted of numerous and repeated violations of the federal mail  
15 and wire fraud statutes – namely 18 U.S.C. sections 1341 and 1343 – that prohibit  
16 the use of any interstate or foreign mail or wire facility for the purpose of executing  
17 scheme to defraud. These mailings and wirings were executed in furtherance of the  
18 enterprise's scheme to defraud the class and caused injury to the property of class  
19 members.

20           68. To further the scheme to defraud, new GM routinely issued technical  
21 service bulletins to the dealers and/or letters to consumers and/or responses in  
22 internet forums as a stop gap half measure designed to avoid costly recalls.

23           69. As part of its obligations under the TREAD Act, new GM was required  
24 to submit to NHTSA, its monthly and quarterly reports regarding potential product  
25 defects and complaints involving potential defects. To further the scheme to defraud  
26 and in order to escape investigation and costs associated with recalls, new GM  
27 systematically under reported and omitted relevant information about the nature of  
28 the defects and the number of defect-related incidents and complaints from these

1 reports, which new GM transmitted or caused to be transmitted from its offices in  
2 Michigan to federal regulators in Washington, D.C.

3 70. The conduct of new GM and Esis in furtherance of this scheme was  
4 intentional. Plaintiffs and class members were harmed by new GM's conduct and, as  
5 a result, purchased or leased defective class vehicles after new GM was created for  
6 significantly more money than they would have paid absent the scheme to defraud,  
7 and/or remain in possession of vehicles of diminished value that new GM otherwise  
8 would have repaired or replaced, and/or sold class vehicles after revelations of  
9 defects for a loss. In addition, plaintiffs and class members were harmed by  
10 undertaking the costs of investigations and repairs caused by the defects. New GM  
11 unfairly reaped millions of dollars in excessive sales revenue as a result of this  
12 scheme and its conduct in furtherance of this scheme.

13 **COUNT II**

14 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

15 **(15 U.S.C. Section 2301, et seq.)**

16 71. Plaintiffs reallege and incorporate by reference all paragraphs as though  
17 fully set forth herein.

18 72. Plaintiffs bring this Count on behalf of members of the nationwide class  
19 who are residents of the following states: Alaska, Arkansas, California, Colorado,  
20 Delaware, District of Columbia, Hawaii, Indiana, Kansas, Louisiana, Maine,  
21 Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana,  
22 Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North  
23 Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina,  
24 South Dakota, Texas, Utah, Virginia, West Virginia, and Wyoming (the class for the  
25 purposes of this Count).

26 73. This Court has jurisdiction to decide claims brought under 15 U.S.C.  
27 2301 by virtue of 28 U.S.C. section 1332(a) – (d).

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1           74. The class vehicles are “consumer products” within the meaning of the  
2 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(1).

3           75. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss  
4 Warranty Act, 15 U.S.C. section 2301(3). They are consumers because they are  
5 persons entitled under applicable state law to enforce against the warrantor the  
6 obligations of its implied warranties.

7           76. GM is a “supplier” and “warrantor” within the meaning of the  
8 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(4) – (5).

9           77. 15 U.S.C. section 2310(d)(1) provides a cause of action for any  
10 consumer who is damaged by the failure of a warrantor to comply with an implied  
11 warranty.

12           78. GM provided plaintiffs and the other class members with an implied  
13 warranty of merchantability in connection with the purchase or lease of their vehicle  
14 on or after July 11, 2009, that is an “implied warranty” within the meaning of the  
15 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(7). As a part of the implied  
16 warranty of merchantability, GM warranted that the class vehicles were fit for their  
17 ordinary purpose as safe passenger motor vehicles, would pass without objection in  
18 the trade as designed, manufactured and marketed and packaged and labeled.

19           79. GM breached its implied warranties as described in more detail above  
20 and is therefore, liable to plaintiffs and the class pursuant to 15 U.S.C. section  
21 2310(d)(1). Without limitation, the class vehicles share common design defects in  
22 that they are defectively designed and manufactured to permit excessive valve wear  
23 which results in sudden failure during ordinary operation, leaving occupants of the  
24 class vehicles vulnerable to crashes, serious injury, and death.

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1           80. In its capacity as a warrantor, GM had knowledge of the inherent  
2 defects in the class vehicles. Any effort by GM to limit the implied warranties in a  
3 manner that would exclude coverage of the class vehicles is unconscionable, and any  
4 such effort to disclaim, or otherwise limit, liability for the class vehicles is null and  
5 void.

6           81. Any limitations GM might seek to impose on its warranties are  
7 procedurally unconscionable. There was unequal bargaining power between GM and  
8 the plaintiffs and the other class members as, at all times of purchase and lease,  
9 plaintiffs and the other class members had no other options for purchasing warranty  
10 coverage other than directly from GM.

11           82. Any limitations might seek to impose on its warranties are substantively  
12 unconscionable. GM knew that the class vehicles were defective and would continu  
13 to pose risks after the warranties purportedly expired. GM failed to disclose these  
14 defects to plaintiffs and the other class members. Thus, GM's enforcement of the  
15 durational limitations on those warranties is harsh and shocks the conscience.

16           83. Plaintiffs and each of the other class members have had sufficiently  
17 direct dealings with either GM or its agents (dealerships) to establish a privity of  
18 contract between GM on the one hand, and plaintiffs and each of the other class  
19 members, on the other hand. Nonetheless, privity is not required here because  
20 plaintiffs and each of the other class members are intended third party beneficiaries  
21 of contracts between GM and its dealers, and specifically, of GM's implied  
22 warranties. The dealers were not intended to be the ultimate consumers of the class  
23 vehicles and have no rights under the warranty agreements provided with the class  
24 vehicles; the warranty agreements were designed for and intended to benefit  
25 consumers. Finally, privity is also not required because the class vehicles are  
26 dangerous instrumentalities due to the aforementioned defects and non-conformities

27           84. Pursuant to 15 U.S.C. section 2310(e), plaintiffs are entitled to bring thi  
28 class action and are not required to give GM notice and an opportunity to cure until

1 such time as the Court determines the representative capacity of plaintiffs pursuant to  
2 Rule 23 of the Federal Rules of Civil Procedure.

3 85. The amount in controversy of plaintiffs' individual claims meets or  
4 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum  
5 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be  
6 determined in this lawsuit. Plaintiffs, individually and on behalf of the other class  
7 members, seek all damages permitted by law, including diminution in value of their  
8 vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C.  
9 2310(d)(2), plaintiffs and other class members are entitled to recover a sum equal to  
10 the aggregate amount of costs and expenses (including attorneys' fees based on  
11 actual time expended) determined by the Court to have reasonably been incurred by  
12 plaintiffs and the other class members in connection with the commencement and  
13 prosecution of this action.

14 86. Further, plaintiffs and the class are also entitled to equitable relief under  
15 15 U.S.C. section 2310(d)(1). Based on GM's continuing failures to fix the known  
16 defects, plaintiffs seek a declaration that GM has not adequately implemented its  
17 recall commitments and requirements and general commitments to fix its failed  
18 processes, and injunctive relief in the form of judicial supervision over the recall  
19 process is warranted. Plaintiffs also seek a determination that GM is obligated to  
20 provide warranty services beyond the time specified in said warranties, based on the  
21 facts as alleged herein. Plaintiffs also seek the establishment of a GM funded  
22 program for plaintiffs and class members to recover out-of-pocket costs incurred in  
23 attempting to rectify the defects in their vehicles.

### 24 COUNT III

### 25 NEGLIGENCE

26 87. Plaintiffs bring this Count on behalf of members of the nationwide class  
27 who reside in Arkansas, Maryland, Louisiana, Maryland and Ohio (negligence  
28 subclasses).

1 88. GM has designed, manufactured, sold or otherwise placed in the stream  
2 of commerce class vehicles which are defective, as set forth above.

3 89. GM had a duty to design and manufacture a product that would be  
4 useful for its intended and foreseeable uses and users, including the use to which its  
5 products were put by plaintiffs and other members of the negligence subclasses.

6 90. GM breached its duties to plaintiffs and the other members of the  
7 negligence subclasses because GM was negligent in the design, development and  
8 manufacture and testing of the class vehicles, and GM is responsible for this  
9 negligence.

10 91. GM was negligent in the design, development, manufacture and testing  
11 of the class vehicles because it knew, or in the exercise of reasonable care should  
12 have known, that the vehicles equipped with a 7.0 liter V8 engine were defective and  
13 posed an unreasonable risk of catastrophic engine failure with a risk of death or  
14 seriously bodily injury to plaintiffs and other members of the negligent subclasses,  
15 passengers, other motorists, pedestrians and the public at large.

16 92. Plaintiffs, individually and on behalf of the other members of the  
17 negligence subclasses, rely upon Restatement (second) of Torts section 395.

18 93. GM further breached its duties to plaintiffs and the other members of the  
19 negligence subclasses by supplying directly or through a third person defective  
20 vehicles to be used by such foreseeable persons as plaintiffs and the other members  
21 of negligence subclasses.

22 94. GM knew, or had reason to know, that the vehicles were likely to suffer  
23 a catastrophic engine failure and were likely dangerous for the use to which they  
24 were supplied.

25 95. GM failed to exercise reasonable care to inform customers of the  
26 dangerous condition or of the facts under which the vehicles are likely to be  
27 dangerous.

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1 96. GM had a continuing duty to warn and instruct the intended foreseeable  
2 users of its vehicles, including plaintiffs and the other members of the negligence  
3 subclasses, of the defective condition of the vehicles and the risk attended to using  
4 the vehicles. Plaintiffs and other members of the negligence subclass were entitled  
5 to know that the vehicles, in their ordinary operation, were not reasonably safe for  
6 their intended and ordinary purposes and uses.

7 97. GM knew or should have known of the defects described herein. GM  
8 breached its duty to plaintiffs and other members of the negligence subclasses because  
9 it failed to warn and instruct the intended foreseeable users of its vehicles of the  
10 defective conditions of the vehicles, and the risk attended to using the vehicles.

11 98. As a direct and proximate result of GM's negligence, plaintiffs and the  
12 other members of the negligence subclasses suffered damages.

13 **Alabama**

14 **COUNT IV**

15 **VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT**

16 **(ALA. CODE § 8-19-1, et seq.)**

17 99. Plaintiffs reallege and incorporate by reference all paragraphs as though  
18 fully set forth herein.

19 100. This claim is brought solely on behalf of Nationwide Class Members  
20 who are Alabama residents (the "Alabama Class").

21 101. Plaintiffs and the Alabama Class are "consumers" within the meaning of  
22 ALA. CODE § 8-19-3(2).

23 102. Plaintiffs, the Alabama Class, and New GM are "persons" within the  
24 meaning of ALA. CODE § 8-19-3(5).

25 103. The class vehicles are "goods" within the meaning of ALA. CODE § 8-  
26 19-3(3).

27 104. New GM was and is engaged in "trade or commerce" within the  
28 meaning of ALA. CODE § 8-19-3(8).

1           105. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”)  
2 declares several specific actions to be unlawful, including: “(5) Representing that  
3 goods or services have sponsorship, approval, characteristics, ingredients, uses,  
4 benefits, or qualities that they do not have,” “(7) Representing that goods or services  
5 are of a particular standard, quality, or grade, or that goods are of a particular style or  
6 model, if they are of another,” and “(27) Engaging in any other unconscionable,  
7 false, misleading, or deceptive act or practice in the conduct of trade or commerce.”  
8 ALA. CODE § 8-19-5. New GM engaged in deceptive business practices prohibited  
9 by the Alabama DTPA, including: representing that class vehicles have  
10 characteristics, uses, benefits, and qualities which they do not have; representing that  
11 class vehicles are of a particular standard, quality, and grade when they are not;  
12 advertising class vehicles with the intent not to sell or lease them as advertised;  
13 representing that the subject of a transaction involving class vehicles has been  
14 supplied in accordance with a previous representation when it has not; and engaging  
15 in other unconscionable, false, misleading, or deceptive act or practice in the conduct  
16 of trade or commerce.

17           106. New GM also engaged in unlawful trade practices by employing  
18 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
19 suppression or omission of any material fact with intent that others rely upon such  
20 concealment, suppression or omission, in connection with the sale of class vehicles  
21 old on or after July 11, 2009.

22           107. From the date of its inception on July 11, 2009, New GM knew of many  
23 serious defects affecting many models and years of class vehicles, because of (i) the  
24 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,  
25 investigations, and notifications from regulatory authorities; and (iii) ongoing  
26 performance of New GM’s TREAD Act obligations. New GM became aware of

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1 other serious defects and systemic safety issues years ago, but concealed all of that  
2 information.

3 108. New GM was also aware that it valued cost-cutting over safety, selected  
4 parts from the cheapest supplier regardless of quality, and actively discouraged  
5 employees from finding and flagging known defects, and that this approach would  
6 necessarily cause the existence of more defects in the vehicles it designed and  
7 manufactured and the failure to disclose and remedy defects in all GM-branded  
8 vehicles. New GM concealed this information as well.

9 109. By failing to disclose and by actively concealing the many defects in  
10 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality  
11 and by presenting itself as a reputable manufacturer that valued safety and stood  
12 behind its vehicles after they were sold, New GM engaged in deceptive business  
13 practices in violation of the Alabama DTPA.

14 110. In the course of New GM's business, it willfully failed to disclose and  
15 actively concealed the dangerous risk posed by the defects discussed above. New  
16 GM compounded the deception by repeatedly asserting that GM-branded vehicles  
17 were safe, reliable, and of high quality, and by claiming to be a reputable  
18 manufacturer that valued safety and stood behind its vehicles once they are on the  
19 road.

20 111. New GM's unfair or deceptive acts or practices were likely to and did in  
21 fact deceive reasonable consumers, including Plaintiffs, about the true safety and  
22 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of  
23 safety at New GM, and the true value of the class vehicles.

24 112. New GM intentionally and knowingly misrepresented material facts  
25 regarding the class vehicles with an intent to mislead Plaintiffs and the Alabama  
26 Class.

27 113. New GM knew or should have known that its conduct violated the  
28 Alabama DTPA.

1 114. As alleged above, New GM made material statements about the safety  
2 and reliability of the class vehicles and the GM brand that were either false or  
3 misleading.

4 115. New GM owed Plaintiffs a duty to disclose the true safety and reliability  
5 of the class vehicles and the devaluing of safety at New GM, because New GM:

6 (a) Possessed exclusive knowledge that it valued cost-cutting over  
7 safety, selected parts from the cheapest supplier regardless of quality, and actively  
8 discouraged employees from finding and flagging known safety defects, and that this  
9 approach would necessarily cause the existence of more defects in the vehicles it  
10 designed and manufactured;

11 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

12 (c) Made incomplete representations about the safety and reliability  
13 of the class vehicles generally, and the valve guide defects in particular, while  
14 purposefully withholding material facts from Plaintiffs that contradicted these  
15 representations.

16 116. Because New GM fraudulently concealed the defects in the class  
17 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma  
18 attached to those vehicles by New GM's conduct, they are now worth significantly  
19 less than they otherwise would be.

20 117. New GM's systemic devaluation of safety and its concealment of the  
21 defects in the class vehicles were material to Plaintiffs and the Alabama Class. A  
22 vehicle made by a reputable manufacturer of vehicles is worth more than an  
23 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that  
24 conceals defects rather than promptly remedies them.

25 118. Plaintiffs and the Alabama Class suffered ascertainable loss caused by  
26 New GM's misrepresentations and its concealment of and failure to disclose material  
27 information. Plaintiffs who purchased class vehicles after the date of New GM's  
28 inception either would have paid less for their vehicles or would not have purchased

1 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result  
2 of New GM's misconduct.

3 119. Regardless of time of purchase or lease, no Plaintiffs would have  
4 maintained and continued to drive their vehicles had they been aware of New GM's  
5 misconduct. By contractually assuming TREAD Act responsibilities with respect to  
6 Old GM class vehicles, New GM effectively assumed the role of manufacturer of  
7 those vehicles because the TREAD Act on its face only applies to vehicle  
8 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM  
9 vehicle owners to refrain from unfair and deceptive acts or practices under the  
10 Alabama DTPA. And, in any event, all class vehicle owners suffered ascertainable  
11 loss in the form of diminished value of their vehicles as a result of New GM's  
12 deceptive and unfair acts and practices made in the course of New GM's business.

13 120. As a direct and proximate result of New GM's violations of the  
14 Alabama DTPA, Plaintiffs and the Alabama Class have suffered injury-in-fact and/o  
15 actual damage.

16 121. Pursuant to ALA. CODE § 8-19-10, Plaintiffs and the Alabama Class  
17 seek monetary relief against New GM measured as the greater of (a) actual damages  
18 in an amount to be determined at trial and (b) statutory damages in the amount of  
19 \$100 for each Plaintiff and each Alabama Class member.

20 122. Plaintiffs also seek an order enjoining New GM's unfair, unlawful,  
21 and/or deceptive practices, attorneys' fees, and any other just and proper relief  
22 available under the ALA. CODE § 8-19-1, et seq.

### 23 COUNT V

### 24 FRAUD BY CONCEALMENT

25 123. Plaintiffs reallege and incorporate by reference all paragraphs as though  
26 fully set forth herein.

27 124. This claim is brought on behalf of Nationwide Class Members who are  
28 Alabama residents (the "Alabama Class").

1 125. New GM concealed and suppressed material facts concerning the  
2 quality of the class vehicles.

3 126. New GM concealed and suppressed material facts concerning the  
4 culture of New GM – a culture characterized by an emphasis on cost-cutting, the  
5 studious avoidance of quality issues, and a shoddy design process.

6 127. New GM concealed and suppressed material facts concerning the  
7 defects in the class vehicles, and that it valued cost-cutting over quality and took  
8 steps to ensure that its employees did not reveal known defects to regulators or  
9 consumers.

10 128. New GM did so in order to boost confidence in its vehicles and falsely  
11 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle  
12 that New GM was a reputable manufacturer that stands behind its vehicles after they  
13 are sold and that its vehicles are safe and reliable. The false representations were  
14 material to consumers, both because they concerned the quality and safety of the  
15 class vehicles and because the representations played a significant role in the value of  
16 the vehicles.

17 129. New GM had a duty to disclose the defects in the class vehicles because  
18 they were known and/or accessible only to New GM, were in fact known to New  
19 GM as of the time of its creation in 2009 and at every point thereafter, New GM had  
20 superior knowledge and access to the facts, and New GM knew the facts were not  
21 known to or reasonably discoverable by Plaintiffs and the Alabama Class. New GM  
22 also had a duty to disclose because it made many general affirmative representations  
23 about the safety, quality, and lack of defects in its vehicles, as set forth above, which  
24 were misleading, deceptive and incomplete without the disclosure of the additional  
25 facts set forth above regarding defects in the class vehicles. Having volunteered to  
26 provide information to Plaintiffs, GM had the duty to disclose not just the partial  
27 truth, but the entire truth. These omitted and concealed facts were material because  
28 they directly impact the value of the class vehicles purchased or leased by Plaintiffs

1 and the Alabama Class.

2 130. New GM actively concealed and/or suppressed these material facts, in  
3 whole or in part, to protect its profits and avoid recalls that would hurt the brand's  
4 image and cost New GM money, and it did so at the expense of Plaintiffs and the  
5 Alabama Class.

6 131. On information and belief, New GM has still not made full and adequate  
7 disclosure and continues to defraud Plaintiffs and the Alabama Class and conceal  
8 material information regarding defects that exist in the class vehicles.

9 132. Plaintiffs and the Alabama Class were unaware of these omitted  
10 material facts and would not have acted as they did if they had known of the  
11 concealed and/or suppressed facts, in that they would not have purchased cars  
12 manufactured by New GM; and/or they would not have purchased cars manufactured  
13 by Old GM in the time after New GM had come into existence and had fraudulently  
14 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would  
15 not have continued to drive their vehicles or would have taken other affirmative  
16 steps. Plaintiffs' and the Alabama Class's actions were justified. New GM was in  
17 exclusive control of the material facts and such facts were not known to the public,  
18 Plaintiffs, or the Alabama Class.

19 133. Because of the concealment and/or suppression of the facts, Plaintiffs  
20 and the Alabama Class sustained damage because they own vehicles that diminished  
21 in value as a result of New GM's concealment of, and failure to timely disclose, the  
22 defects in the class vehicles and the quality issues engendered by New GM's  
23 corporate policies. Had they been aware of the defects that existed in the class  
24 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after  
25 New GM came into existence either would have paid less for their vehicles or would  
26 not have purchased or leased them at all; and no Plaintiffs regardless of time of  
27 purchase or lease would have maintained their vehicles.

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1 134. The value of all Alabama Class Members' vehicles has diminished as a  
2 result of New GM's fraudulent concealment of the defects which have tarnished the  
3 Corvette brand and made any reasonable consumer reluctant to purchase any of the  
4 class vehicles, let alone pay what otherwise would have been fair market value for  
5 the vehicles.

6 135. Accordingly, New GM is liable to the Alabama Class for damages in an  
7 amount to be proven at trial.

8 136. New GM's acts were done maliciously, oppressively, deliberately, with  
9 intent to defraud, and in reckless disregard of Plaintiffs' and the Alabama Class's  
10 rights and well-being to enrich New GM. New GM's conduct warrants an assessment  
11 of punitive damages in an amount sufficient to deter such conduct in the future,  
12 which amount is to be determined according to proof.

13 **COUNT VI**

14 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**  
15 **AGAINST OLD GM IN BANKRUPTCY**

16 137. Plaintiffs reallege and incorporate by reference all paragraphs as though  
17 fully set forth herein.

18 138. This claim is brought only on behalf of Alabama Class members who  
19 are Alabama residents.

20 139. New GM was aware of the defects in class vehicles sold by Old GM  
21 from the moment it came into existence upon entry of the Sale Order And Sale  
22 Agreement by which New GM acquired substantially all the assets of Old GM.

23 140. The Alabama Class did not receive notice of the defect in the class  
24 vehicles prior to the entry of the Sale Order. No recall occurred.

25 141. In September of 2009, the bankruptcy court entered the Bar Date Order,  
26 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claim:  
27 to be filed against Old GM.

1 142. Because New GM concealed its knowledge of the defect in the class  
2 vehicles, the Alabama Class did not receive notice of the defect prior to the passage  
3 of the Bar Date. No recall occurred.

4 143. In 2011, the bankruptcy court approved a Chapter 11 Plan under which  
5 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds  
6 of the bankruptcy sale to, among others, the holders of claims that were ultimately  
7 allowed.

8 144. The out-of-pocket consideration provided by New GM for its  
9 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of  
10 New GM common stock and two series of warrants, each to purchase 7.5% of the  
11 post-closing shares of New GM (collectively, the "New GM Securities").

12 145. Through an "accordion feature" in the Sale Agreement, New GM agreed  
13 that it would provide additional consideration if the aggregate amount of allowed  
14 general unsecured claims exceeded \$35 billion. In that event, New GM would be  
15 required to issue additional shares of New GM Common Stock for the benefit of the  
16 GUC Trust's beneficiaries.

17 146. As of September 30, 2014, the total amount of Allowed Claims was  
18 approximately \$31.854 billion, and the total amount of Disputed Claims was  
19 approximately \$79.5 million.

20 147. As of September 30, 2014, the GUC Trust had distributed more than  
21 89% of the New GM Securities. After a subsequent November 12 distribution, the  
22 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all of  
23 which is already slated to pay the GUC Trust's expenses and existing beneficiaries of  
24 the Trust.

25 148. But for New GM's fraudulent concealment of the defects, the Alabama  
26 Class would have filed claims against Old GM before the Bar Date.

27 149. Had the Alabama Class filed timely claims before the Bar Date, the  
28 claims would have been allowed.

1           150. New GM's concealment and suppression of the material fact of the  
2 defect in the class vehicles over the first several months of its existence served to  
3 prevent the filing of claims by the Class.

4           151. New GM had a duty to disclose in the class vehicles defects because the  
5 information was known and/or accessible only to New GM who had superior  
6 knowledge and access to the facts, and New GM knew the facts were not known to  
7 or reasonably discoverable by Plaintiffs and the Alabama Class. These omitted and  
8 concealed facts were material because they directly impacted the safety and the value  
9 of the class vehicles purchased or leased by Plaintiffs and the Alabama Class, who  
10 had a limited period of time in which to file a claim against the manufacturer of the  
11 vehicles, Old GM.

12           152. Plaintiffs and the Alabama Class were unaware of these omitted  
13 material facts and would not have acted as they did if they had known of the  
14 concealed and/or suppressed facts. Plaintiffs' and the Alabama Class's actions were  
15 justified. New GM was in exclusive control of the material facts and such facts were  
16 not known to the public, Plaintiffs, or the Alabama Class.

17           153. Because of the concealment and/or suppression of the facts, Plaintiffs  
18 and the Alabama Class sustained damage because they lost their chance to file a  
19 claim against Old GM and seek payment from the GUC Trust. Had they been aware  
20 of the defects that existed in their vehicles, Plaintiffs would have timely filed claims  
21 and would have recovered from the GUC Trust.

22           154. Accordingly, New GM is liable to the Alabama Class members for their  
23 damages in an amount to be proven at trial.

24           155. New GM's acts were done maliciously, oppressively, deliberately, with  
25 intent to defraud, and in reckless disregard of Plaintiffs' and the Alabama Class's  
26 rights and well-being to enrich New GM. New GM's conduct warrants an assessment  
27 of punitive damages in an amount sufficient to deter such conduct in the future,  
28 which amount is to be determined according to proof.

**COUNT VII**

**THIRD-PARTY BENEFICIARY CLAIM**

156. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

157. This claim is brought only on behalf of Class members who are Alabama residents (the "Alabama Class").

158. In the Sales Agreement through which New GM acquired substantially all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

159. With the exception of the portion of the agreement that purports to immunize New GM from its own independent misconduct with respect to cars and parts made by New GM, the Sales Agreement is a valid and binding contract.

160. But for New GM's covenant to comply with the TREAD Act with respect to cars and parts made by Old GM, the TREAD Act would have no application to New GM with respect to those cars and parts. That is because the TREAD Act on its face imposes reporting and recall obligations only on the "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

161. Because New GM agreed to comply with the TREAD Act with respect to vehicles manufactured by Old GM, New GM agreed to (among other things): (a) make quarterly submissions to NHTSA of "early warning reporting" data, including incidents involving property damage, warranty claims, consumer complaints, and field reports concerning failure, malfunction, lack of durability or other performance

1 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all  
2 underlying records on which the early warning reports are based and all records  
3 containing information on malfunctions that may be related to motor vehicle safety.  
4 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows  
5 or should know that a safety defect exists – including notifying NHTSA and  
6 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §  
7 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

8 162. Plaintiffs, as owners and lessors of vehicles and parts manufactured by  
9 Old GM, are the clear intended beneficiaries of New GM's agreement to comply  
10 with the TREAD Act. Under the Sales Agreement, Plaintiffs were to receive the  
11 benefit of having a manufacturer responsible for monitoring the safety of their Old  
12 GM vehicles and making certain that any known defects would be promptly  
13 remedied.

14 163. Although the Sale Order which consummated New GM's purchase of  
15 Old GM purported to give New GM immunity for claims concerning vehicles or  
16 parts made by Old GM, the bankruptcy court recently ruled that provision to be  
17 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale  
18 conduct with respect to cars and parts made by Old GM. Therefore, that provision of  
19 the Sale Order and related provisions of the Sale Agreement cannot be read to bar  
20 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale  
21 breaches of the promise it made in the Sales Agreement.

22 164. New GM breached its covenant to comply with the TREAD Act with  
23 respect to class vehicles, as it failed to take action to remediate the defects at any  
24 time, up to the present.

25 165. Plaintiffs and the Alabama Class were damaged as a result of New  
26 GM's breach. Because of New GM's failure to timely remedy the defect in the class  
27 vehicles, the value of Old GM class vehicles has diminished in an amount to be  
28 determined at trial.

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**COUNT VIII****UNJUST ENRICHMENT**

166. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

167. This claim is brought on behalf of members of the Alabama Class who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period after New GM came into existence, and who purchased or leased class vehicles in the time period before New GM came into existence, which cars were still on the road after New GM came into existence (the "Alabama Unjust Enrichment Class").

168. New GM has received and retained a benefit from the Plaintiffs and inequity has resulted.

169. New GM has benefitted from selling and leasing defective cars, including Certified Pre-Owned cars, whose value was artificially inflated by New GM's concealment of defect issues that plagued class vehicles, for more than they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to pay other costs.

170. With respect to the class vehicles purchased before New GM came into existence that were still on the road after New GM came into existence and as to which New GM had unjustly and unlawfully determined not to recall, New GM benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted from its statements about the success of New GM.

171. Thus, all Alabama Unjust Enrichment Class Members conferred a benefit on New GM.

172. It is inequitable for New GM to retain these benefits.

173. Plaintiffs were not aware about the true facts about class vehicles, and did not benefit from GM's conduct.

174. New GM knowingly accepted the benefits of its unjust conduct.

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1 175. As a result of New GM's conduct, the amount of its unjust enrichment  
2 should be disgorged, in an amount according to proof.

3 Arizona

4 COUNT NO. IX

5 VIOLATIONS OF THE CONSUMER FRAUD ACT

6 (Arizona Rev. Stat. § 44-1521, et seq.)

7 176. Plaintiffs reallege and incorporate by reference all paragraphs as though  
8 fully set forth herein.

9 177. This claim is brought only on behalf of Class Members who are Arizona  
10 residents (the "Arizona Class").

11 178. Plaintiffs, the Arizona Class and New GM are "persons" within the  
12 meaning of the Arizona Consumer Fraud Act ("Arizona CFA"), ARIZ. REV. STAT.  
13 § 44-1521(6).

14 179. The class vehicles are "merchandise" within the meaning of ARIZ.  
15 REV. STAT. § 44-1521(5).

16 180. The Arizona CFA provides that "[t]he act, use or employment by any  
17 person of any deception, deceptive act or practice, fraud, . . . misrepresentation, or  
18 concealment, suppression or omission of any material fact with intent that others rely  
19 upon such concealment, suppression or omission, in connection with the sale . . . of  
20 any merchandise whether or not any person has in fact been misled, deceived or  
21 damaged thereby, is declared to be an unlawful practice." ARIZ. REV. STAT. § 44-  
22 1522(A).

23 181. New GM also engaged in unlawful trade practices by employing  
24 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
25 suppression or omission of any material fact with intent that others rely upon such  
26 concealment, suppression or omission, in connection with the sale of class vehicles  
27 sold on or after July 11, 2009.

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1 182. From the date of its inception on July 11, 2009, New GM knew of many  
2 serious defects affecting many models and years of class vehicles, because of (i) the  
3 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,  
4 investigations, and notifications from regulatory authorities; and (iii) ongoing  
5 performance of New GM's TREAD Act obligations. New GM became aware of  
6 other serious defects and systemic safety issues years ago, but concealed all of that  
7 information.

8 183. New GM was also aware that it valued cost-cutting over safety, selected  
9 parts from the cheapest supplier regardless of quality, and actively discouraged  
10 employees from finding and flagging known safety defects, and that this approach  
11 would necessarily cause the existence of more defects in the vehicles it designed and  
12 manufactured and the failure to disclose and remedy defects in all GM-branded  
13 vehicles. New GM concealed this information as well.

14 184. By failing to disclose and by actively concealing the many defects in  
15 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality  
16 and by presenting itself as a reputable manufacturer that valued safety and stood  
17 behind its vehicles after they were sold, New GM engaged in deceptive business  
18 practices in violation of the Arizona CFA.

19 185. In the course of New GM's business, it willfully failed to disclose and  
20 actively concealed the dangerous risk posed by the defects discussed above. New  
21 GM compounded the deception by repeatedly asserting that GM-branded vehicles  
22 were safe, reliable, and of high quality, and by claiming to be a reputable  
23 manufacturer that valued safety and stood behind its vehicles once they are on the  
24 road.

25 186. New GM's unfair or deceptive acts or practices were likely to and did in  
26 fact deceive reasonable consumers, including Plaintiffs, about the true safety and  
27 reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing  
28 of safety at New GM, and the true value of the class vehicles.

1 187. New GM intentionally and knowingly misrepresented material facts  
2 regarding the class vehicles with an intent to mislead Plaintiffs and the Arizona  
3 Class.

4 188. New GM knew or should have known that its conduct violated the  
5 Arizona CFA.

6 189. As alleged above, New GM made material statements about the safety  
7 and reliability of the class vehicles and the GM brand that were either false or  
8 misleading.

9 190. New GM owed Plaintiffs a duty to disclose the true safety and reliability  
10 of the class vehicles and the devaluing of safety at New GM, because New GM:

11 (a) Possessed exclusive knowledge that it valued cost-cutting over  
12 safety, selected parts from the cheapest supplier regardless of quality, and actively  
13 discouraged employees from finding and flagging known safety defects, and that this  
14 approach would necessarily cause the existence of more defects in the vehicles it  
15 designed and manufactured;

16 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

17 (c) Made incomplete representations about the safety and reliability  
18 of the class vehicles generally, and the valve guide defects in particular, while  
19 purposefully withholding material facts from Plaintiffs that contradicted these  
20 representations.

21 191. Because New GM fraudulently concealed the defects in the class  
22 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma  
23 attached to those vehicles by New GM's conduct, they are now worth significantly  
24 less than they otherwise would be.

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1 192. New GM's systemic devaluation of safety and its concealment of the  
2 defects in the class vehicles were material to Plaintiffs and the Arizona Class. A  
3 vehicle made by a reputable manufacturer of vehicles is worth more than an  
4 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that  
5 conceals defects rather than promptly remedies them.

6 193. Plaintiffs and the Arizona Class suffered ascertainable loss caused by  
7 New GM's misrepresentations and its concealment of and failure to disclose materia  
8 information. Plaintiffs who purchased class vehicles after the date of New GM's  
9 inception either would have paid less for their vehicles or would not have purchased  
10 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result  
11 of New GM's misconduct.

12 194. Regardless of time of purchase or lease, no Plaintiffs would have  
13 maintained and continued to drive their vehicles had they been aware of New GM's  
14 misconduct. By contractually assuming TREAD Act responsibilities with respect to  
15 Old GM class vehicles, New GM effectively assumed the role of manufacturer of  
16 those vehicles because the TREAD Act on its face only applies to vehicle  
17 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM  
18 vehicle owners to refrain from unfair and deceptive acts or practices under the  
19 Arizona CFA. And, in any event, all class vehicle owners suffered ascertainable loss  
20 in the form of diminished value of their vehicles as a result of New GM's deceptive  
21 and unfair acts and practices made in the course of New GM's business.

22 195. The recalls and repairs instituted by New GM have not been adequate.

23 196. As a direct and proximate result of New GM's violations of the Arizona  
24 CFA, Plaintiffs and the Arizona Class have suffered injury-in-fact and/or actual  
25 damage.

26 197. Plaintiffs and the Arizona Class seek monetary relief against New GM  
27 as the greater of (a) actual damages in an amount to be determined at trial and (b)  
28 statutory in the amount of \$100 for each Plaintiff and each Arizona Class Member.

1 Plaintiffs and the Arizona Class also seek punitive damages because New GM  
2 engaged in aggravated and outrageous conduct with an evil mind.

3 198. Plaintiffs also seek an order enjoining New GM's unfair, unlawful,  
4 and/or deceptive practices, attorneys' fees, and any other just and proper relief  
5 available under the Arizona CFA.

6 **COUNT X**

7 **FRAUD BY CONCEALMENT**

8 199. Plaintiffs reallege and incorporate by reference all paragraphs as though  
9 fully set forth herein.

10 200. This claim is brought on behalf of Nationwide Class Members who are  
11 Arizona residents (the "Arizona Class").

12 201. New GM concealed and suppressed material facts concerning the  
13 quality of the class vehicles.

14 202. New GM concealed and suppressed material facts concerning the  
15 culture of New GM – a culture characterized by an emphasis on cost-cutting, the  
16 studious avoidance of quality issues, and a shoddy design process.

17 203. New GM concealed and suppressed material facts concerning the  
18 defects in the class vehicles, and that it valued cost-cutting over quality and took  
19 steps to ensure that its employees did not reveal known defects to regulators or  
20 consumers.

21 204. New GM did so in order to boost confidence in its vehicles and falsely  
22 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle  
23 that New GM was a reputable manufacturer that stands behind its vehicles after they  
24 are sold and that its vehicles are safe and reliable. The false representations were  
25 material to consumers, both because they concerned the quality and safety of the  
26 class vehicles and because the representations played a significant role in the value c  
27 the vehicles.

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1           205. New GM had a duty to disclose the defects in the class vehicles because  
2 they were known and/or accessible only to New GM, were in fact known to New  
3 GM as of the time of its creation in 2009 and at every point thereafter, New GM had  
4 superior knowledge and access to the facts, and New GM knew the facts were not  
5 known to or reasonably discoverable by Plaintiffs and the Arizona Class. New GM  
6 also had a duty to disclose because it made many general affirmative representations  
7 about the safety, quality, and lack of defects in its vehicles, as set forth above, which  
8 were misleading, deceptive and incomplete without the disclosure of the additional  
9 facts set forth above regarding defects in the class vehicles. Having volunteered to  
10 provide information to Plaintiffs, GM had the duty to disclose not just the partial  
11 truth, but the entire truth. These omitted and concealed facts were material because  
12 they directly impact the value of the class vehicles purchased or leased by Plaintiffs  
13 and the Arizona Class.

14           206. New GM actively concealed and/or suppressed these material facts, in  
15 whole or in part, to protect its profits and avoid recalls that would hurt the brand's  
16 image and cost New GM money, and it did so at the expense of Plaintiffs and the  
17 Arizona Class.

18           207. On information and belief, New GM has still not made full and adequate  
19 disclosure and continues to defraud Plaintiffs and the Arizona Class and conceal  
20 material information regarding defects that exist in the class vehicles.

21           208. Plaintiffs and the Arizona Class were unaware of these omitted material  
22 facts and would not have acted as they did if they had known of the concealed and/or  
23 suppressed facts, in that they would not have purchased cars manufactured by New  
24 GM; and/or they would not have purchased cars manufactured by Old GM in the  
25 time after New GM had come into existence and had fraudulently opted to conceal,  
26 and to misrepresent, the true facts about the vehicles; and/or would not have  
27 continued to drive their vehicles or would have taken other affirmative steps.  
28 Plaintiffs' and the Arizona Class's actions were justified. New GM was in exclusive

1 control of the material facts and such facts were not known to the public, Plaintiffs,  
2 or the Arizona Class.

3 209. Because of the concealment and/or suppression of the facts, Plaintiffs  
4 and the Arizona Class sustained damage because they own vehicles that diminished  
5 in value as a result of New GM's concealment of, and failure to timely disclose, the  
6 defects in the class vehicles and the quality issues engendered by New GM's  
7 corporate policies. Had they been aware of the defects that existed in the class  
8 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after  
9 New GM came into existence either would have paid less for their vehicles or would  
10 not have purchased or leased them at all; and no Plaintiffs regardless of time of  
11 purchase or lease would have maintained their vehicles.

12 210. The value of all Arizona Class Members' vehicles has diminished as a  
13 result of New GM's fraudulent concealment of the defects which have tarnished the  
14 Corvette brand and made any reasonable consumer reluctant to purchase any of the  
15 class vehicles, let alone pay what otherwise would have been fair market value for  
16 the vehicles.

17 211. Accordingly, New GM is liable to the Arizona Class for damages in an  
18 amount to be proven at trial.

19 212. New GM's acts were done maliciously, oppressively, deliberately, with  
20 intent to defraud, and in reckless disregard of Plaintiffs' and the Arizona Class's  
21 rights and well-being to enrich New GM. New GM's conduct warrants an assessment  
22 of punitive damages in an amount sufficient to deter such conduct in the future,  
23 which amount is to be determined according to proof.

24 **COUNT XI**

25 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**

26 **AGAINST OLD GM IN BANKRUPTCY**

27 213. Plaintiffs reallege and incorporate by reference all paragraphs as though  
28 fully set forth herein.

1 214. This claim is brought only on behalf of Arizona Class members who are  
2 Arizona residents (the "Arizona Class").

3 215. New GM was aware of the defects in class vehicles sold by Old GM  
4 from the moment it came into existence upon entry of the Sale Order And Sale  
5 Agreement by which New GM acquired substantially all the assets of Old GM.

6 216. The Arizona Class did not receive notice of the defect in the class  
7 vehicles prior to the entry of the Sale Order. No recall occurred.

8 217. In September of 2009, the bankruptcy court entered the Bar Date Order,  
9 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims  
10 to be filed against Old GM.

11 218. Because New GM concealed its knowledge of the defect in class  
12 vehicles, the Arizona Class did not receive notice of defect prior to the passage of the  
13 Bar Date. No recall occurred.

14 219. In 2011, the bankruptcy court approved a Chapter 11 Plan under which  
15 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceed  
16 of the bankruptcy sale to, among others, the holders of claims that were ultimately  
17 allowed.

18 220. The out-of-pocket consideration provided by New GM for its  
19 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of  
20 New GM common stock and two series of warrants, each to purchase 7.5% of the  
21 post-closing shares of New GM (collectively, the "New GM Securities").

22 221. Through an "accordion feature" in the Sale Agreement, New GM agree  
23 that it would provide additional consideration if the aggregate amount of allowed  
24 general unsecured claims exceeded \$35 billion. In that event, New GM would be  
25 required to issue additional shares of New GM Common Stock for the benefit of the  
26 GUC Trust's beneficiaries.

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1           222. As of September 30, 2014, the total amount of Allowed Claims was  
2 approximately \$31.854 billion, and the total amount of Disputed Claims was  
3 approximately \$79.5 million.

4           223. As of September 30, 2014, the GUC Trust had distributed more than  
5 89% of the New GM Securities. After a subsequent November 12 distribution, the  
6 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o  
7 which is already slated to pay the GUC Trust's expenses and existing beneficiaries o  
8 the Trust.

9           224. But for New GM's fraudulent concealment of the defects, the Arizona  
10 Class would have filed claims against Old GM before the Bar Date.

11           225. Had the Arizona Class filed timely claims before the Bar Date, the  
12 claims would have been allowed.

13           226. New GM's concealment and suppression of the material fact of the  
14 defect in class vehicles over the first several months of its existence served to preven  
15 the filing of claims by the Class.

16           227. New GM had a duty to disclose the defect in class vehicles because the  
17 information was known and/or accessible only to New GM who had superior  
18 knowledge and access to the facts, and New GM knew the facts were not known to  
19 or reasonably discoverable by Plaintiffs and the Arizona Class. These omitted and  
20 concealed facts were material because they directly impacted the safety and the value  
21 of the class vehicles purchased or leased by Plaintiffs and the Arizona Class, who  
22 had a limited period of time in which to file a claim against the manufacturer of the  
23 vehicles, Old GM.

24           228. Plaintiffs and the Arizona Class were unaware of these omitted material  
25 facts and would not have acted as they did if they had known of the concealed and/or  
26 suppressed facts. Plaintiffs' and the Arizona Class's actions were justified. New GM  
27 was in exclusive control of the material facts and such facts were not known to the  
28 public, Plaintiffs, or the Arizona Class.

1 229. Because of the concealment and/or suppression of the facts, Plaintiffs  
2 and the Arizona Class sustained damage because they lost their chance to file a claim  
3 against Old GM and seek payment from the GUC Trust. Had they been aware of the  
4 defect that existed in their vehicles, Plaintiffs would have timely filed claims and  
5 would have recovered from the GUC Trust.

6 230. Accordingly, New GM is liable to the Arizona Class members for their  
7 damages in an amount to be proven at trial.

8 231. New GM's acts were done maliciously, oppressively, deliberately, with  
9 intent to defraud, and in reckless disregard of Plaintiffs' and the Arizona Class's  
10 rights and well-being to enrich New GM. New GM's conduct warrants an  
11 assessment of punitive damages in an amount sufficient to deter such conduct in the  
12 future, which amount is to be determined according to proof.

## 13 COUNT XII

### 14 THIRD-PARTY BENEFICIARY CLAIM

15 232. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 233. This claim is brought only on behalf of Class members who are Arizona  
18 residents (the "Arizona Class").

19 234. In the Sales Agreement through which New GM acquired substantially  
20 all of the assets of New GM, New GM explicitly agreed as follows:

21 From and after the Closing, [New GM] shall comply with the  
22 certification, reporting and recall requirements of the National Traffic  
23 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation  
24 Recall Enhancement, Accountability and Documentation Act, the Clean  
25 Air Act, the California Health and Safety Code and similar Laws, in  
26 each case, to the extent applicable in respect of vehicles and vehicle  
27 parts manufactured or distributed by [Old GM].

1           235. With the exception of the portion of the agreement that purports to  
2 immunize New GM from its own independent misconduct with respect to cars and  
3 parts made by Old GM, the Sales Agreement is a valid and binding contract.

4           236. But for New GM's covenant to comply with the TREAD Act with  
5 respect to cars and parts made by Old GM, the TREAD Act would have no  
6 application to New GM with respect to those cars and parts. That is because the  
7 TREAD Act on its face imposes reporting and recall obligations only on the  
8 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

9           237. Because New GM agreed to comply with the TREAD Act with respect  
10 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)  
11 make quarterly submissions to NHTSA of "early warning reporting" data, including  
12 incidents involving property damage, warranty claims, consumer complaints, and  
13 field reports concerning failure, malfunction, lack of durability or other performance  
14 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all  
15 underlying records on which the early warning reports are based and all records  
16 containing information on malfunctions that may be related to motor vehicle safety.  
17 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows  
18 or should know that a safety defect exists -- including notifying NHTSA and  
19 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §  
20 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

21           238. Plaintiffs, as owners and lessors of vehicles and parts manufactured by  
22 Old GM, are the clear intended beneficiaries of New GM's agreement to comply  
23 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the  
24 benefit of having a manufacturer responsible for monitoring the safety of their Old  
25 GM vehicles and making certain that any known defects would be promptly  
26 remedied.

27           239. Although the Sale Order which consummated New GM's purchase of  
28 Old GM purported to give New GM immunity from claims concerning vehicles or

1 parts made by Old GM, the bankruptcy court recently ruled that provision to be  
2 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale  
3 conduct with respect to cars and parts made by Old GM. Therefore, that provision of  
4 the Sale Order and related provisions of the Sale Agreement cannot be read to bar  
5 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale  
6 breaches of the promise it made in the Sale Agreement.

7 240. New GM breached its covenant to comply with the TREAD Act with  
8 respect to class vehicles, as it failed to take action to remediate defects at any time,  
9 up to the present.

10 241. Plaintiffs and the Arizona Class were damaged as a result of New GM's  
11 breach. Because of New GM's failure to timely remedy the defect in class vehicles,  
12 the value of Old GM class vehicles has diminished in an amount to be determined at  
13 trial.

### 14 COUNT XIII

### 15 UNJUST ENRICHMENT

16 242. Plaintiffs reallege and incorporate by reference all paragraphs as though  
17 fully set forth herein.

18 243. This claim is brought on behalf of members of the Arizona Class who  
19 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period  
20 after New GM came into existence, and who purchased or leased class vehicles in the  
21 time period before New GM came into existence, which cars were still on the road  
22 after New GM came into existence (the "Arizona Unjust Enrichment Class").

23 244. New GM has received and retained a benefit from the Plaintiffs and  
24 inequity has resulted.

25 245. New GM has benefitted from selling and leasing defective cars,  
26 including Certified Pre-Owned cars, whose value was artificially inflated by New  
27 GM's concealment of defect issues that plagued class vehicles, for more than they  
28 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to

1 pay other costs.

2 246. With respect to the class vehicles purchased before New GM came into  
3 existence that were still on the road after New GM came into existence and as to  
4 which New GM had unjustly and unlawfully determined not to recall, New GM  
5 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted  
6 from its statements about the success of New GM.

7 247. Thus, all Arizona Unjust Enrichment Class Members conferred a benefi  
8 on New GM.

9 248. It is inequitable for New GM to retain these benefits.

10 249. Plaintiffs were not aware about the true facts about class vehicles, and  
11 did not benefit from GM's conduct.

12 250. New GM knowingly accepted the benefits of its unjust conduct.

13 251. As a result of New GM's conduct, the amount of its unjust enrichment  
14 should be disgorged, in an amount according to proof.

15 California

16 **COUNT XIV**

17 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**

18 **(Cal. Civ. Code § 1750, et seq.)**

19 252. Plaintiffs reallege and incorporate by reference all paragraphs as though  
20 fully set forth herein.

21 253. This claim is brought only on behalf of Nationwide Class Members who  
22 are California residents (the "California Class").

23 254. New GM is a "person" under Cal. Civ. Code § 1761(c).

24 255. Plaintiffs and the California Class are "consumers," as defined by CAL.  
25 CIVIL CODE § 1761(d), who purchased or leased one or more class vehicles.

26 256. The California Legal Remedies Act ("CLRA") prohibits "unfair or  
27 deceptive acts or practices undertaken by any person in a transaction intended to  
28 result or which results in the sale or lease of goods or services to any consumer[.]"

1 Cal. Civ. Code § 1770(a). New GM has engaged in unfair or deceptive acts or  
2 practices that violated Cal. Civ. Code § 1750, et seq., as described above and below,  
3 by among other things, representing that class vehicles have characteristics, uses,  
4 benefits, and qualities which they do not have; representing that class vehicles are of  
5 a particular standard, quality, and grade when they are not; advertising class vehicles  
6 with the intent not to sell or lease them as advertised; and representing that the  
7 subject of a transaction involving class vehicles has been supplied in accordance with  
8 a previous representation when it has not.

9 257. In the course of its business, New GM systematically devalued safety  
10 and concealed defects in class vehicles as described herein and otherwise engaged in  
11 activities with a tendency or capacity to deceive. New GM also engaged in unlawful  
12 trade practices by employing deception, deceptive acts or practices, fraud,  
13 misrepresentations, or concealment, suppression or omission of any material fact  
14 with intent that others rely upon such concealment, suppression or omission, in  
15 connection with the sale of case vehicles.

16 258. From the date of its inception on July 11, 2009, New GM knew of many  
17 serious defects affecting many models and years of class vehicles, because of (i) the  
18 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,  
19 investigations, and notifications from regulatory authorities; and (iii) ongoing  
20 performance of New GM's TREAD Act obligations. New GM became aware of  
21 other serious defects and systemic safety issues years ago, but concealed all of that  
22 information.

23 259. New GM was also aware that it valued cost-cutting over safety, selected  
24 parts from the cheapest supplier regardless of quality, and actively discouraged  
25 employees from finding and flagging known safety defects, and that this approach  
26 would necessarily cause the existence of more defects in the vehicles it designed and  
27 manufactured and the failure to disclose and remedy defects in all class vehicles.  
28 New GM concealed this information as well.

1       260. By failing to disclose and by actively concealing the many defects in  
2 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality,  
3 and by presenting itself as a reputable manufacturer that valued safety and stood  
4 behind its vehicles after they were sold, New GM engaged in unfair and deceptive  
5 business practices in violation of the CLRA.

6       261. In the course of New GM's business, it willfully failed to disclose and  
7 actively concealed the dangerous risk posed by the defects discussed above. New  
8 GM compounded the deception by repeatedly asserting that GM-branded vehicles  
9 were safe, reliable, and of high quality, and by claiming to be a reputable  
10 manufacturer that valued safety and stood behind its vehicles once they are on the  
11 road.

12       262. New GM's unfair or deceptive acts or practices were likely to and did in  
13 fact deceive reasonable consumers, including Plaintiffs, about the true safety and  
14 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at  
15 New GM, and the true value of the class vehicles.

16       263. New GM intentionally and knowingly misrepresented material facts  
17 regarding the class vehicles with an intent to mislead Plaintiffs and the California  
18 Class.

19       264. New GM knew or should have known that its conduct violated the  
20 CLRA.

21       265. As alleged above, New GM made material statements about the safety  
22 and reliability of the class vehicles and the GM brand that were either false or  
23 misleading.

24       266. New GM owed Plaintiffs a duty to disclose the true safety and reliability  
25 of the class vehicles and the devaluing of safety at New GM, because New GM:

26               (a) Possessed exclusive knowledge that it valued cost-cutting over  
27 safety, selected parts from the cheapest supplier regardless of quality, and actively  
28 discouraged employees from finding and flagging known safety defects, and that this

1 approach would necessarily cause the existence of more defects in the vehicles it  
2 designed and manufactured;

3 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

4 (c) Made incomplete representations about the safety and reliability  
5 of the class vehicles generally, and the valve guide defects in particular, while  
6 purposefully withholding material facts from Plaintiffs that contradicted these  
7 representations.

8 267. Because New GM fraudulently concealed the defects in the class  
9 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma  
10 attached to those vehicles by New GM's conduct, they are now worth significantly  
11 less than they otherwise would be.

12 268. New GM's systemic devaluation of safety and its concealment of the  
13 defects in the class vehicles were material to Plaintiffs and the California Class. A  
14 vehicle made by a reputable manufacturer of vehicles is worth more than an  
15 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that  
16 conceals defects rather than promptly remedies them.

17 269. Plaintiffs and the California Class suffered ascertainable loss caused by  
18 New GM's misrepresentations and its concealment of and failure to disclose materia  
19 information. Plaintiffs who purchased class vehicles after the date of New GM's  
20 inception either would have paid less for their vehicles or would not have purchased  
21 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result  
22 of New GM's misconduct.

23 270. Regardless of time of purchase or lease, no Plaintiffs would have  
24 maintained and continued to drive their vehicles had they been aware of New GM's  
25 misconduct. By contractually assuming TREAD Act responsibilities with respect to  
26 Old GM class vehicles, New GM effectively assumed the role of manufacturer of  
27 those vehicles because the TREAD Act on its face only applies to vehicle  
28 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM